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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 135

BILLY G. WOODY,

Petitioner,

v.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONER

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Opinions Below

The unreported order of the Court of Appeals is appended to the application of the Petitioner for a writ of certiorari. Exhibit C.

Jurisdiction

The order of the Court of Appeals was entered on October 10, 1957. The petition for a writ of certiorari was granted on June 30, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Question Presented

Whether upon a conviction under the National Motor Vehicle Theft Act petitioner could be given a five-year

sentence and fine for "transporting" a stolen automobile in interstate commerce and an additional five-year sentence and fine, to be served consecutively, for "receiving and concealing" the same automobile.

Statutes Involved

18 U.S.C., Sec. 2312 (Section 3 of the National Motor Vehicle Theft Act, 41 Stat. 324, 325, as amended):

Transportation of stolen vehicles.

Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

18 U.S.C., Sec. 2313 (Section 4 of the National Motor Vehicle Theft Act, 41 Stat. 325, as amended):

Sale or receipt of stolen vehicles.

Whoever receives, conceals, stores, barters, sells or disposes of any motor vehicle or aircraft, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Statement

On June 24, 1954, in the United States District Court for the Western District of Tennessee, petitioner was found guilty by a jury of two violations of the National Motor Vehicle Theft Act (R. 19). The indictment was in two counts. Count 1 charged petitioner with transporting a stolen automobile in interstate commerce knowing it to have been stolen, in violation of 18 U.S.C., Sec. 2312 and

Count 2 charged him with receiving and concealing the same automobile in violation of 18 U.S.C., Sec. 2313 (Petitioner's Application, Exhibit D) (R. 19, 20). He was given the maximum sentence of 5 years and a fine of $125 on each count (R. 19), to be served consecutively. Shortly after his conviction petitioner was transferred as a mental patient to the Medical Center for federal prisoners, Springfield, Missouri. He has recently been removed from certified psychiatric status.

On July 12, 1957, petitioner applied for leave to proceed in forma pauperis in the district court on a motion to vacate the excess sentence under the provisions of 28 U.S.C., Sec. 2255 (R. 19). This proceeding was dismissed by that court on the ground that it was "without merit and not taken in good faith" (Petitioner's Application Exhibit A (R. 29, 30, 33). On appeal the Court of Appeals for the Sixth Circuit, in a memorandum opinion (R. 49, 50), denied the motion to vacate sentence because the petitioner's contention that his conduct constituted but one punishable offense under the National Motor Vehicle Theft Act "has long since been settled contrary to the petitioner's contention" (Petitioner's Application Exhibit B).

Application for a writ of certiorari was made on October 21, 1957, and the writ was granted on June 30, 1958. 2 L.ed. 2d 1549 (not officially reported) (R. 51).

Introduction

In the memorandum opinion of the Circuit Court of Appeals for the Sixth Circuit it was impliedly assumed and conceded that petitioner's acts and conduct constituted a single continuous act. For example, the court cited and relied upon a list of cases of which *Austin* v. *United States* (1955), 224 F.2d 273, is typical. In that case it was held

that even though both charges "grow out of one transaction" the fact of one transaction does not make a single punishable offense when two or more offenses are defined in the statute. Therefore it is submitted, as was the fact, that petitioner's acts and conduct in transporting, receiving and concealing the automobile constituted a single continuous act. Petitioner does not question the obvious fact that the National Motor Vehicle Theft Act defines several offenses, but petitioner does contend, when one continuous act and course of conduct by one person results in a violation of more than one section of this particular statute, that Congress did not intend that multiple, cumulative punishment could be inflicted. Since but one course of conduct was involved, a single continuous act, petitioner contends: (1) that Congress did not intend that the punishment should be pyramided and (2) that the cumulative punishment inflicted upon him falls within the proscription of all the cases in this court dealing with the fragmentation of crimes for the purpose of punishment.

ARGUMENT

I.

Petitioner Has Engaged in One Continuous Criminal Act for Which He Has Been Subjected to Cumulative, Consecutive Punishment Under the Provisions of the National Motor Vehicle Theft Act, Now Title 18 U.S.C., Secs. 2312 and 2313, Contrary to the Intention of Congress and a Common Sense Reading of These Sections.

The National Motor Vehicle Theft Act which now by revision appears in the United States Code under Stolen Property was enacted on October 29, 1919. Since that time it has been amended to apply to aircraft as well as to motor vehicles. It was also repealed and reenacted, presumably, to facilitate a revision of the Criminal Code in 1948. The relevant provisions of the act in its original form appear as follows (58 Cong. Rec. 6434):

"Be it enacted, etc., That this act may be cited as the national motor vehicle theft act.

"Sec. 2. That when used in this act:

"(a) The term 'motor vehicle' shall include an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle not designed for running on rails;

"(b) The term 'interstate or foreign commerce' as used in this act shall include transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.

"Sec. 3. That whoever shall transport or cause to be transported in interstate or foreign commerce a

motor vehicle, knowing the same to have been stolen, shall be punished by a fine of not more than $5,000, or by imprisonment of not more than five years, or both.

"Sec. 4. That whoever shall, (with the intent to deprive the owner of the possession thereof,)[1] receive conceal, store, barter, sell, or dispose of any motor vehicle, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be punished by a fine of not more than $5,000, or by imprisonment of not more than five years, or both.

"Sec. 5. That any person violating this act may be punished in any district in or through which such motor vehicle has been transported or removed by such offender."

These provisions have not been materially altered by amendment and are substantially the same as when they were first enacted. This act was specifically designed to punish the person who transported a stolen motor vehicle in interstate commerce.[2] The short title of the act since 1940 is: "An Act to punish for the transportation of stolen motor vehicles or aircraft in interstate or foreign commerce." 18 U.S.C., Sec. 408.

In discussing the act Representative Igoe said (58 Cong. Rec. 5473):

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[1] The words in parentheses were deleted before the Bill was finally enacted.

[2] In *United States* v. *Turley* (1957), 352 U.S. 407, the legislative history of the act was considered in part when the court defined the word "stolen" to mean not only common law larceny, as the Circuit Courts of Appeals had held, but also embezzlement or any felonious taking with the intent to deprive the owner of the rights and benefits of ownership.

> "* * * * The offense sought to be reached in the act is the transportation, the taking it across the line, taking it from one State to another."

Senator Cummins stated that the significance of the act was (58 Cong. Rec. 6434):

> "This is a House bill, and the Senate committee accepted in the main the work of the House. I see no substantial objection, however, to the point made by the Senator from Connecticut. The practice is to steal an automobile close to a State line and run it across the State line. The first section is intended to punish anyone who does that thing, knowing the vehicle to have been stolen. The further practice is, if possible, to dispose of the vehicle to some other party, confederate or otherwise, when it gets across the State line, and section 4 is for the purpose of punishing a man who barters or sells or disposes of the property with intent to deprive the owner of the possession thereof, or if he conceals it knowing it to have been stolen. I think that would probably embrace every case that could be reached."

It is petitioner's contention that Congress did not intend that section 4 should be applied merely for the purpose of increasing the punishment of a single offender. On the contrary these provisions were enacted to cover all possible offenders in the alternative because the act was specifically designed to combat one specific purpose, i.e., the transportation of stolen motor vehicles in interstate commerce. Therefore, for example, if A who transported a stolen motor vehicle in violation of section 3 could not be successfully prosecuted under that provision, he might be subjected to prosecution under section 4 of the act. The act was designed to aid the states in combating the criminal

activity of transporting stolen motor vehicles. It is suggested at this point that Congress intended to give the government two avenues by which to prosecute a transporter of a stolen motor vehicle in interstate commerce, or a confederate or accessory if he had one, and not to authorize two cumulative punishments for the defendant who consummates a single continuous criminal act. In other words Congress defined two distinct crimes, giving the prosecutor a choice where a single continuous act or transaction involves, necessarily, multiple infractions.

Secondly, one will reach the conclusion from reading the entire history of the act that section 4 was designed primarily to reach the confederate or accessories of the transporter. All the examples of possible violations under the act, discussed by the members of Congress, assume that another person other than the transporter was involved and violated section 4. Further, Representative Dyer was particularly concerned with the organized gangs operating near state lines which had successfully evaded prosecution by the states. It was pointed out that thieves would steal automobiles in one state, transport them to another state, and there a "fence" or confederates would receive, conceal, store or sell the automobiles. In his introductory remarks he explained (58 Cong. Rec. 5472):

> "It provides, gentlemen, for only two things. Sec. 3 provides for the punishment of a thief stealing a car and transporting it from one state to another. Sec. 4 provides for the receipt of the stolen car by thieves in another state for the purpose of selling and disposing of it."

Consequently, since section 4 was enacted for the primary purpose of reaching third persons who aided and abetted in the theft and transportation of motor vehicles, it was certainly not intended to be used for the purpose of pyra-

miding the punishment of a person who had violated both sections of the statute by one continuous act.

There is no direct reference in the congressional history of the act to the method of punishment of persons violating the act. The question of whether one person could be subjected to cumulative punishment was not considered. Representative Dyer did state, in his opening remarks, that the act had for its purpose the providing of "severe punishment" of those guilty of the stealing of automobiles in interstate or foreign commerce. However, this language does not warrant the conclusion that Congress thereby intended cumulative sentences for the defendant who consummates a single continuous act such as the case here presents.

In any event, should the court conclude that the congressional intention with respect to the question presented is unclear and not sufficiently spelled out, attention is respectfully called to the recent case of *Bell* v. *United States*, 349 U.S. 81, in which Mr. Justice Frankfurter stated the applicable principle of law (1 c. 83):

> "When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity. * * * It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of a penal code against the imposition of a harsher punishment. This in no wise implies that language used in criminal statutes should not be read with the saving grace of common sense with which other enactments, not cast in technical language, are to be read. * * * It merely means that if Congress does not fix the punishment for a federal offense clearly and without ambiguity, *doubt will be resolved against turning a single transaction into multiple offenses,* * * *."*

In view of the foregoing legislative history petitioner respectfully submits that it was not the intention of Congress that cumulative punishment should be inflicted for a violation involving one transaction, a single, continuous act.

II.

Petitioner Was Convicted of Multiple Offenses Involving One Continuous Course of Conduct, a Single Transaction, and Under All of the Established, Applicable Tests and Standards He Was Therefore Improperly Sentenced to Suffer Cumulative, Consecutive Punishments.

In some of the cases dealing with the fragmentation of crimes for the purpose of punishment it has been suggested that "color-matching" of cases and analogies were not helpful to the court. It is respectfully submitted, however, that this case and the question presented is determinable by the standards, tests and reasoning applied in all of the modern cases involving the infliction of multiple punishment. Petitioner's case comes within all the cases interpreting the various statutes with respect to the contention that he has committed one continuous act for which he was subjected to cumulative punishment. Therefore, irrespective of the particular statutes involved or of any language in the cases limiting their application, these cases expound a principle of law applicable to this case. They all tend to answer the single question of whether the defendant who has consummated one transaction can be subjected to cumulative punishment under the particular statute involved. A review of these cases is therefore necessary to the decision in this case.

A leading modern case is *Albrecht* v. *United States* (1927), 273 U.S. 1. In that case the defendant was con-

victed of possession and sale of the same liquor and it was held that possession and sale of the liquor constituted separate offenses warranting consecutive punishment for each violation. Mr. Justice Brandeis illustrated the fact by pointing out that one may possess liquor and not sell it, that he may cause it to be sold without possessing it, and, therefore, Congress may punish each step leading to the consummation of the transaction. The analogy and implication of the case is plain and forceful; in contrast with the sale and possession of liquor it is very difficult if not impossible to conceive of the transportation of a stolen automobile in interstate commerce without receiving and concealing it, all as a part of one transaction. The transaction is "consummated" when the defendant commits the primary act and transports the automobile. As to him there are no separate steps to consummation, in the nature of the offense of transportation, if not of necessity, he receives the automobile and he conceals it by the very act of transportation.

In *United States* v. *Adams*, 281 U.S. 202 (1930), the defendant who was president of a member bank of the Federal Reserve System made two entries on the bank's books to accomplish the fraudulent receipt of $75,000. The two entries had reference to the same transaction and were a correlated means of accomplishing a single fraud. The statute punished any officer of a federal reserve bank who made any false entry in any book of the bank with intent to defraud. The court held that the mere multiplication of entries, all to the same point and with a single intent should not multiply the punishment in proportion to the complexity of the bookkeeping. This case is clearly analogous to petitioner's case. There was one statute involved and one amount was obtained by making two entries on the books of the bank. Petitioner's case involves one statute, and one automobile which was both transported, received and concealed in one continuous transaction.

Another leading case, discussed in all the recent cases, is *Blockburger* v. *United States* (1932), 284 U.S. 299, which involved a prosecution under the Harrison Narcotics Act. The indictment consisted of 5 counts and the defendant was convicted on the second, third, and fifth counts. The second count charged a sale of drugs on a specified day not in or from the original stamped package. The third count charged a sale on the following day to the same person not in or from the original stamped package and the fifth count charged the latter sale also as having been made not in pursuance of a written order of the purchaser as required by the statute. Blockburger was sentenced to five years on each count, the terms to run consecutively. It was argued that the sale charged in the third count as having been made not from the original stamped package and the same sale charged in the fifth count as having been made not in pusuance of a written order of the purchaser, constituted but one offense for which only a single penalty could be imposed. Mr. Justice Sutherland in delivering the opinion of the court, stated that the applicable rule is that where the same act or transaction constitutes a violation of two *distinct* statutory provisions, the test to be applied in determining whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not. Aside from the obvious factual distinction in sales and other conduct the tests applied in the *Blockburger* case are peculiarly applicable and determinative of the question presented here. As indicated, proof of the primary offense of transportation would of necessity prove the secondary offenses of receipt and concealment of a stolen automobile. As applied to the petitioner and the multiple offenses with which he was charged, the two statutory provisions did not "require(s) proof of a fact which the other does not." The most significant distinction the court makes in the *Blockburger*

case is that the two sales of narcotics to the same person on separate days did not constitute "a single continuing offense" which the court contrasted with an offense "continuous in character." In this connection petitioner respectfully repeats that the transportation, receipt and concealment of a stolen automobile is in the nature of things one continuous offense, one course of action, and, as of course, the proof of transportation is the same proof required to show that he received and concealed it.

The next case in point of time is *Michner* v. *United States* (1947), 331 U.S. 789, 157 F.2d 616, in which the court on certiorari to the Eighth Circuit Court of Appeals reversed the decision in a per curiam opinion on the authority, among others, of the *Blockburger* case. Justices Douglas, Murphy and Rutledge dissented and thought the decision of the Eighth Circuit to be sound and controlled by other cases. Therefore, the reasoning of the Eighth Circuit Court of Appeals adopted in the dissent is important with respect to its application to petitioner's case. In that case there were two counts, one, for making a plate in the likeness of one prepared by the Bureau of Engraving and, two, having the same plate in his possession, all in violation of 18 U.S.C., Sec. 264(1). Defendant was sentenced to fifteen years on each count, to be served consecutively. The Court of Appeals modified the sentence by striking out and vacating that portion of the sentence resulting from a conviction on count two. The court pointed out that the defendant could not have very well made the plate without having it in his possession and even though the same act may have constituted a violation of two distinct statutes the same evidence was required to sustain the conviction. The court said 1 c. 618:

> "There was but one transaction and one plate and the act of procuring possession was an integral part of the unlawful act of creating this plate."

First it is suggested by petitioner that the *Blockburger* case should not have been applied to this case as that case involved two distinct statutes enacted at different times while the *Michner* case involved only one statute. Secondly, upon the law and the facts in the *Michner* case petitioner's concealment of the automobile was but an incident to the transportation charged in the first count and his concealment of it was an "integral" part of the unlawful act of transporting a stolen motor vehicle in interstate commerce.

The next case in point of time is *United States* v. *Universal C. I. T. Credit Corporation* (1952), 344 U.S. 218, which involved the violation of the Fair Labor Standards Act. The indictment was in 32 counts, 6 for failure to pay minimum wages, 20 for violation of overtime provisions and 6 for failure to keep proper records. Eleven employees were involved, there were two violations charged as to each of nine employees and others with respect to the records involved four employees. The Fair Labor Standards Act provided a fine of $10,000 for violating any provision of the act and the question was whether a fine of $320,000 could be imposed. Mr. Justice Frankfurter emphasized that the offense made punishable under the Fair Labor Standards Act is "a course of conduct" 1 c. 224:

> "The offense made punishable under the Fair Labor Standards Act is a *course of conduct*. Such a reading of the statute compendiously treats as one offense all violations that arise from that singleness of thought or action which may be deemed a single impulse, a conception recognized by this court in the Blockburger case * * * ."

Likewise, as to petitioner the transportation, receipt and concealment of a stolen automobile is one course of conduct, one offense from a single thought, purpose or action and

as to him his aggregate of acts is a single course of conduct and so a single offense of which the statute compendiously treats.

The next important case is *Bell* v. *United States* (1955), 349 U.S. 81. There the defendant pleaded guilty to violations laid in two counts charging the transportation in interstate commerce of a woman for an immoral purpose, each count referring to a different woman. The two women were transported on the same trip and in the same vehicle. He was sentenced to consecutive terms of two years and six months on each of the two counts. Defendant argued that he had committed only a single offense and could not be subjected to cumulative punishment under the two counts.

On writ of certiorari to review the judgment of the United States Court of Appeals (Sixth Circuit) affirming the denial by the United States District Court of the Eastern District of Tennessee of a motion to correct the sentence, it was held that the transportation of two women for immoral purposes in the same vehicle at the same time resulted in only one offense under the Mann Act. Mr. Justice Frankfurter emphasized that when Congress leaves to the judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity. Applying this reasoning to petitioner's case it may be said that nowhere in the congressional history of the National Motor Vehicle Theft Act or in common-sense reading of the statute can it be asserted without doubt that Congress intended to provide cumulative punishment for a single overt act. Therefore, as in the *Bell* case the uncertainty as to the intention of Congress should be resolved in favor of the petitioner. If the transportation of two women for immoral purposes is to be punished as a single offense the transportation, receipt and concealment of a motor vehicle by the same person at the same time is likewise a single punishable offense.

Following this decision came the case of *Prince* v. *United States* (1956), 352 U.S. 322. There an indictment was returned against the defendant in two counts, one for entering a bank with intent to commit a felony and one for robbery of the bank under 18 U.S.C., Sec. 2113. Prince was given 15 years for the robbery and 20 years for the entering, sentences to run consecutively. Mr. Chief Justice Warren in rendering the majority opinion states that the court is dealing with a statute of limited purpose and one with an inconclusive legislative history. The same observation may be made of petitioner's case, for the National Motor Vehicle Theft Act is also unique and of limited purpose. The Chief Justice also says that the statute creates and defines several crimes related to thefts in banks and that the crime of entering with intent to commit a felony *merges* with the crime of robbery when the robbery is consummated (1 c. 328):

> " * * * The heart of the crime is the intent to steal. This mental element merges into the completed crime if the robbery is consummated. * * *
>
> "We hold, therefore, that when Congress made either robbery or an entry for that purpose a crime it intended that the maximum punishment for robbery should remain at 20 years, but that, even if the culprit should fall short of accomplishing his purpose, he could be imprisoned for 20 years for entering with the felonious intent."

By the same token, the transportation, receipt and concealment provisions of this statute were designed primarily to punish the transportation of stolen automobiles, that is the heart of the crime and concealment is merged with the completed offense as in the robbery cases.

Further, the Chief Justice states that Congress had by amendment defined separate lesser offenses, but in doing

so there was no indication that Congress intended also to pyramid the penalties. This principle is also applicable to petitioner's case. Simply defining separate offenses does not mean that Congress intended to pyramid the penalties which could be imposed for a merged offense upon a single offender who violated both sections by the same overt act.

The most recent case material to the consideration of petitioner's case is *Gore* v. *United States*, decided June 30, 1958, 2 L.ed 2d 1405, 78 S.Ct. 1280 (not officially reported). This was an indictment in six counts for narcotic offenses. The first three counts charged a sale on February 26, 1955, of 20 capsules of heroin and 3 capsules of cocaine; the last three counts charged the sale of 35 capsules of heroin on February 28, 1955. Counts one and four charged the sale of the drugs not in pursuance of a written order, in violation of Sec. 4705(a); counts two and five charged the sale not in the original stamped package, in violation of Sec. 4704(a) and counts three and six charged concealment and sale of the drugs on these respective dates with knowledge that the drugs had been unlawfully imported in violation of Sec. 2(c) of the Narcotic Drugs Import and Export Act. He was convicted on all six counts and given a sentence of one to five years on each count, the sentences on the first three counts to run consecutively, the sentences on the remaining three counts to run concurrently with those on the first three counts. Thus the total sentence was three to fifteen years. On motion to vacate sentence under 28 U.S.C., Sec. 2255, claiming that for all three counts a sentence as for only one count could be imposed, the motion was denied. On certiorari Mr. Justice Frankfurter, who delivered the majority opinion, upheld the cumulative punishment relying on the *Blockburger* case. Mr. Justice Frankfurter at the very beginning stated that Congress had made three distinct offenses in connection with the vending of illicit drugs. A little later in the opinion he

is asked to reconsider the *Blockburger* decision by reading the various specific enactments of Congress as reflecting a unitary congressional purpose to outlaw nonmedicinal sales of narcotics. He says, 1 c. (L.ed. 2d) 1409:

> "We agree with the starting point, but it leads us to the opposite conclusion. * * * The three penal laws for which petitioner was convicted have different origins both in time and design. * * * It seems more daring than convincing to suggest that three different enactments, each relating to a separate way of closing in on illicit distribution of narcotics, passed at three different periods, for each of which a separate punishment was declared by Congress, somehow or other ought to have carried with them an implied indication by Congress that if these three different restrictions were disregarded but, forsooth, in the course of one transaction, the defendant should be treated as though he committed only one of these offenses."

Petitioner was convicted for violating two sections of one statute, the National Motor Vehicle Theft Act, and, therefore, we respectfully submit there is nothing here to prevent application of the implication and doctrine that would have been reached in the *Gore* case had there not been three distinct penal laws having different origins both in time and design. Here Congress had only a single purpose, i.e., to stop the transportation of stolen motor vehicles in interstate commerce, therefore Congress only intended to punish as for a single offense when both sections of this act are violated by a single transaction.

Further, Mr. Justice Frankfurter says, 1. c. (L.ed. 2d) 1408:

> "The fact that an offender violates by a single transaction several regulatory controls devised by Congress

as a means for dealing with a social evil as deleterious as it is difficult to combat does not make the several different regulatory controls single and identic * * * ."

Here again petitioner points out that there is only one regulatory control devised by Congress, one statute, therefore it is a single and identic control.

Mr. Chief Justice Warren, Mr. Justice Brennan, and Mr. Justice Douglas wrote separate dissenting opinions. Mr. Justice Black concurred in the opinion written by Mr. Justice Douglas. Of course, petitioner's case comes within all three dissenting opinions. As expressed with respect to the interpretation of the congressional history of the National Motor Vehicle Theft Act, Congress intended to have both sections of the Act apply in the alternative to get at all the individual offenders' multifarious offenses. It was particularly designed to present the prosecutor with two avenues by which to prosecute one who transports an automobile in interstate or foreign commerce, and it does not authorize two cumulative punishments for the defendant who consummates a single transaction. In other words, the Act was designed to give the prosecutor a choice under the circumstances of the petitioner's case.

Petitioner further states that the cases[3] relied upon by the Circuit Court of Appeals, Sixth Circuit, in denying petitioner's motion to vacate sentences and cited in the government's brief in opposition to petitioner's application for writ of certiorari do not meet the problem presented here. Those cases simply say that Congress defined two offenses and where one transaction results in two or more violations this does not make one offense. This rea-

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[3] *Austin* v. *United States* (1955), 224 F.2d 273 (6th Circuit); *Crawford* v. *United States* (1954), 214 F.2d 313 (6th Circuit); *Madsen* v. *United States* (1947), 165 F.2d 507 (10th Circuit); *Spradley* v. *United States* (1947), 162 F.2d 203 (6th Circuit).

soning loses sight of what is involved here. Petitioner concedes that Congress has defined two or more offenses but the crux of the decision turns on whether Congress intended the punishment provided for the various offenses to apply to a single offender who commits one continuous criminal act which results in a violation of both statutes. None of those cases cite or analyze what was said in the earlier cases such as the *Albrecht* and *Blockburger* cases. Nor do they analyze the congressional history with respect to the National Motor Vehicle Theft Act.

Summary of Argument

Petitioner contends that transporting, concealing and receiving the same automobile in this case constitutes one transaction for which he was subjected to cumulative punishment under Title 18 U.S.C., Secs. 2312 and 2313 contrary to the intent of Congress and a common-sense reading of those sections. That petitioner's act and conduct constituted but one transaction, a single continuous course of conduct was conceded by the Circuit Court of Appeals, Sixth Circuit, in its disposition of his case. (See Petitioner's Application for Writ of Certiorari, Exhibit C.)

Petitioner contends that irrespective of the fact that the previously decided cases involve other statutes, and attempt to limit their application, they should be reviewed in determining whether petitioner's single transaction warrants cumulative punishment.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgments below be reversed and the cause remanded for the purpose of vacating and correcting the sentence in accordance with his motion under Title 28 U.S.C., Sec. 2255.

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